

GEORGE H. PLANT.

FEBRUARY 12, 1895.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LOUD, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 429.]

The Committee on Claims, to whom was referred the bill (S. 429) for the relief of George H. Plant, have had the same under consideration and report it back to the House with the recommendation that it do pass.

The facts in this case are all fully set out in Senate Report No. 210, made at the second session of the Fifty-third Congress by Mr. Pasco, which is as follows:

[Senate Report No. 210, Fifty-third Congress, second session.]

This claim was considered by the committee in the Fifty-second Congress, was favorably reported, with amendments, and passed the Senate, but no final action was taken in the House of Representatives.

The present bill is the same introduced into the Fifty-second Congress, and the committee adopt the report made to the Senate in that Congress.

The present bill is subject to the same objections that the committee made to the former bill, and the same amendments are necessary in order to make it conform to the views heretofore expressed by the committee.

When thus amended, the committee recommend that the bill do pass.

[Senate Report No. 964, Fifty-second Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 707) for the relief of George H. Plant, of the District of Columbia, have carefully considered the same, and submit the following report thereon:

The claimant in 1874 was the owner of a steamboat named the *Lady of the Lake*, then plying upon the waters of the Potomac River. On the 30th day of May of that year the boat was injured in a collision with the U. S. S. *Gettysburg*. On the 9th day of June the Secretary of the Navy appointed a court of inquiry to investigate all the circumstances relating to the collision, and report its causes, and upon whom the blame, if any, should rest. The findings of the court will be given in full further on in this report. Though some blame was cast upon the officers of the *Lady of the Lake*, the court found the officers of the *Gettysburg* responsible for the collision. Subsequently the Treasury Department ordered an investigation to be made by the supervising inspectors of steam vessels. They reported on the 17th day July, 1874, that the pilot in charge of the *Lady of the Lake* complied with all the rules and regulations for the government of pilots, applicable to the case, and that he was exonerated from all blame in the premises.

But no relief followed these findings of the two departments, and the claimant found that he could only receive compensation for his damage and loss by legislative action. Accordingly a bill was introduced into the Senate in his behalf in the Forty-sixth Congress, and a similar bill in each successive Congress till the Forty-eighth, when, on the 27th day of February, 1884, the claim was referred to the Court of Claims under the act of March 3, 1883.

On June 2, 1890, the court filed its findings of fact and they were transmitted to the Senate June 6, 1890, and appear in Miscellaneous Document, Fifty-first Congress, first session, No. 159. The report of the case is here given in full:

[Court of Claims. Congressional case No. 32. George H. Plant v. The United States.]

At a Court of Claims held in the city of Washington on the 2d day of June, A. D. 1890, the court filed the following findings of fact, to wit:

FINDINGS OF FACT.

The claim or matter in the above-entitled case was transmitted to the court by the Senate Committee on Claims on the 27th day of February, 1884.

Messrs. Goode & Goode, esqs., appeared for claimant, and the Attorney-General, by Henry M. Foote, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The case having been brought to a hearing on the 19th of May, 1890, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, finds the facts to be as follows:

About sundown on May 30, 1874, a collision occurred on the Potomac River, nearly opposite Fort Washington, between the United States steamer *Gettysburg* and the *Lady of the Lake*, under the following circumstances:

The *Lady of the Lake* had been down the river with an excursion party from Washington, consisting of about 600 persons, and was on her return trip.

The *Gettysburg*, commanded by Lieut. McRitchie, was going down.

When first sighted the steamers were about three-fourths of a mile apart. At that time the *Lady of the Lake* was on the Virginia side of the river and the *Gettysburg* on the Maryland side.

By the law of the road each steamer was required to keep to the right in passing, but the law also permitted them, by signal agreement, to keep to the left.

The officers of the *Lady of the Lake* preferred to hold their course on the Virginia side, because by so doing they avoided, to some extent, the rapid current of the ebbing tide. They also supposed the *Gettysburg* would prefer the Maryland side, because the channel there was deepest and the assisting current strongest.

Therefore, when the steamers were about half a mile apart, the pilot of the *Lady of the Lake* gave two blasts of her steam whistle, which was the proper signal to request that the steamers might pass by each keeping to the left. The pilot of the *Gettysburg* immediately responded by two blasts of the whistle, which was the proper signal of assent to the proposal. Each steamer then held her course for about a quarter of a mile. Then the *Gettysburg*, by order of Lieut. McRitchie, gave one blast of her whistle, which is the proper signal for each vessel to keep to the right, and immediately ported her helm, thus directing her course to the Virginia side of the river. The *Lady of the Lake* immediately responded with two blasts of the whistle, thus indicating her wish to pass on the left, as already agreed, and held her course. A collision was imminent, and both steamers reversed their engines, but collision could not then be avoided.

The bow of the *Gettysburg* struck the *Lady of the Lake* on her starboard bow, crushing in the upper and lower decks. No persons were injured.

Both Lieut. McRitchie and the claimant agree in their testimony that the signals were given and heard by the officers of each steamer, as above detailed.

The *Gettysburg*, by porting her helm and directing her course to the Virginia side of the river without timely warning, caused the collision.

II.

The rule established by the Board of Supervising Inspectors, under section 29 of the act of February 28, 1871 (16 Stat., 450), to be observed by steam vessels in passing each other on rivers is as follows:

"RULE 1. When steamers are approaching each other 'head and head,' or nearly so, it shall be the duty of each steamer to pass to the right, or on the port side of the other; and the pilot of either steamer may be first in determining to pursue this course, and thereupon shall give, as a signal of his intention, one short and distinct blast of his steam whistle, which the pilot of the other steamer shall answer promptly by a similar blast of his steam whistle, and thereupon such steamers shall pass to the right, or on the port side of each other. But if the course of such steamers is so far on the starboard of each other as not to be considered by the pilots as meeting 'head and head,' or nearly so, or if the vessels are approaching each other in such a manner that passing to the right (as above directed) is deemed unsafe by the pilot of either vessel, the pilot so first deciding shall immediately give two short

and distinct blasts of his steam whistle, which the pilot of the other steamer shall answer promptly by two similar blasts of his steam whistle, and they shall pass to the left, or on the starboard side of each other.

["NOTE.—In the night steamers will be considered meeting 'head and head' so long as both the colored lights of each are in view of the other. In the day a similar position will also be considered 'head and head.'"]

III.

June 9, 1874, the Secretary of the Navy constituted, by the following order, a naval court of inquiry:

To Commander JOHN H. RUSSELL,
U. S. Navy, Rockville, Md.

By virtue of the authority conferred by the "Act for the better government of the Navy of the United States," approved July 11, 1862, I hereby appoint Commander John H. Russell president, Commander Montgomery Sicard and Lieut. Commander Frederick Rodgers members, and First Lieut. George C. Reid, of the Marine Corps, judge-advocate of a court of inquiry, which is ordered to convene at the navy-yard, Washington, D. C., on Thursday, the 11th day of June, 1874, for the purpose of investigating all the circumstances relating to the collision which took place on the Potomac River, near Fort Washington, on or about the 30th day of May, 1874, between the United States steamer *Gettysburg* and the steamboat *Lady of the Lake*. In performing this duty the court will study closely the "Rules of the Road" and act of Congress relating thereto, and state the cause or causes that brought about the collision, with its opinion as to where the blame, if any, should rest.

Given under my hand at the Navy Department of the United States this ninth day of June, in the year eighteen hundred and seventy-four.

GEORGE M. ROBESON,
Secretary of the Navy.

June 19, 1874, the court found as follows:

That both the United States steamer *Gettysburg* and the steamboat *Lady of the Lake* were subject to the act of Congress approved April 29, 1864 (page 158, Naval Laws), for preventing collisions on the water, and in addition to the above the court find that the *Lady of the Lake* was subject to certain rules laid down by the Board of Supervising Inspectors in pursuance of the act of Congress of February 28, 1871.

There is no conflict between these two sets of "rules," but the rules of the Board of Supervisors supplement the naval "Rules of the Road" by certain whistle blasts or signals to be used between vessels, subject to the directions of the Board of Supervising Inspectors.

As regards the facts connected with the collision, the weight of evidence, in the opinion of the court, establishes the point that the vessels, at the time of the exchange of their first whistle signals, must be considered as coming under article 13 of the "rules" for preventing collisions on the water (Naval Laws, page 161), and also under rule 1 of the "Rules issued by the Board of Supervising Inspectors for the government of Pilots;" that is, they were meeting end, or nearly so. In this position the law requires that the helms of both vessels be put to port, and inasmuch as this course was not pursued by the *Lady of the Lake*, the court deem that vessel to have acted in violation of law, and find that her pilot committed an error of judgment in putting his helm to starboard.

At the same time, as the wording of the law (article 13), "end on or nearly end on," implies a certain margin for judgment on the part of pilots, the court are of the opinion that the pilot of the *Lady of the Lake*, though technically in the wrong, can not in the circumstances be considered as being very censurable.

As the vessels are considered as coming within the scope of article 13 of the law for preventing collisions on the water, the court find that the *Gettysburg* acted in violation of law in answering the *Lady of the Lake's* two whistles and in putting his helm to starboard; and that the fact of her pilot having done those acts renders her responsible for the collision.

The pilots of the two vessels are, therefore, considered by the court as having been principally to blame for the collision. Lieutenant McRitchie was following the "rule of the road" in putting his helm apart, as the weight of evidence shows that if both vessels had done so from the first signal the collision would in all probability have been avoided.

But when it becomes evident that the *Lady of the Lake* did not pursue the same course, and that a collision was very probable, he would, in the opinion of the court, have been justified in shifting his helm, in accordance with article 19, page 162, Rules of the Road—Naval Laws.

The evidence shows that after a collision became probable, both vessels stopped and reversed their engines, in conformity with article 16, Rules of the Road, page 161—Naval Laws.

JOHN H. RUSSELL,
Commander U. S. Navy, President Naval Court of Inquiry.
GEORGE C. REID,
First Lieutenant, U. S. Marine Corps, Judge-Advocate.

The Treasury Department also authorized an investigation by the supervising inspectors of steam vessels, who made the following report:

OFFICE OF UNITED STATES LOCAL INSPECTORS OF STEAM VESSELS,
Baltimore, July 17, 1874.

JOHN HENSHAW, Esq.,
Supervising Inspector of Steam Vessels, Third District.

SIR: In compliance with your instructions we proceeded to Washington, D. C., to take the testimony of witnesses in the collision between the United States steamer *Gettysburg* and steamer *Lady of the Lake*, which occurred on the Potomac River, off Fort Washington, on the evening of 30th of May, 1874, and, after having received said testimony, both on the part of the officers of the *Lady of the Lake* together with a number of disinterested passengers of said steamer, we find that the pilot in charge of the *Lady of the Lake* complied with all the rules and regulations for the government of pilots applicable to said case, and is therefore exonerated from all blame in the premises.

(They report also their inability to get the officers of the *Gettysburg* to testify.)

JAMES D. LOWRY,
WILLIAM O. SAVILLE,
United States Local Inspectors of Steamers, Baltimore District.

IV.

May 30, 1874, the claimant was the owner of the *Lady of the Lake*, except a small interest, valued at \$2,500, which he had agreed to transfer to — Partridge, the captain of the boat. This interest had not been paid for, and claimant arranged with Captain Partridge for it and took it back.

V.

At the time of the collision the *Lady of the Lake* was engaged in the business of carrying freight and passengers between Washington and Norfolk and taking excursion parties up and down the river. It was the busy season of the year and her business was large and profitable.

The cost of repairing the boat amounted to \$2,216.85. The loss in earnings while undergoing repairs amounted to \$3,000.

After resuming her regular trips her earnings, in consequence of the interruption and loss of confidence in her safety, were much diminished. This loss can not be accurately calculated, but may be safely estimated at \$1,500.

BY THE COURT.

Filed June 2, 1890.

A true copy.

Test, this 5th day of June, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

No action was taken upon the findings and opinion of the court during the Fifty-first Congress, except to refer the case to this committee with a bill to carry them out. During the time that the matter has been pending in the Senate and this committee and the Court of Claims, various bills have been introduced into the House of Representatives for the claimant's relief, but no final action has ever been there taken.

The Court of Claims came to the same conclusion as to the responsibility for the collision that was reached in the former investigations, and it only remains to be determined whether an appropriation shall be made in favor of the claimant, and, if so, in what amount.

It is true that the Government does not hold itself generally responsible for acts of wrong or negligence on the part of its subordinate officers or agents, but this rule has not always been considered as applicable to cases of maritime collisions. It has been decided by the Supreme Court in the case of *The Siren* (7 Wallace, 152) that a claim for damages exists against a vessel of the United States guilty of a maritime

tort, as much as if the offending vessel belonged to a private citizen. In ordinary cases, however, such a claim can not be enforced, because, for reasons of public policy, jurisdiction is withheld from the courts.

There has been a growing disposition of late years to give a general recognition to cases of damage from collisions and to treat them as essentially different from ordinary cases of negligence and wrongdoing on the part of Government agents, servants, and officials. This arises in part from the great power and authority which is necessarily given to an officer commanding a vessel, and it is argued, too, that when the Government mingles on terms of equality with others on the high seas and navigable inland waters, the security of the citizen requires that the rules laid down for others should be observed by its own officers, commanding its own vessels, and that these rules should be enforced against all alike, and that private persons should receive reparation for any injury done by their violation by officers of the United States.

In England the present practice is to file a libel *in rem.*, upon which the court directs a letter to be written to the lords of the admiralty requesting an appearance on behalf of the Crown. This is generally given, and the case proceeds to judgment. It is insisted that the final decrees are little more than awards, so far as the Government is concerned, but the suits are instituted and conducted on the hypothesis that claims are created against the offending vessels by the collision, and it is presumed that the Government will satisfy a decree rendered by its own tribunals in a case in which it has voluntarily appeared.

Many in our own country have favored a general law for the trial of such cases in our courts, when the United States is alleged to be the offending party. Although no such law has ever been passed, the Government has, in many cases, by special laws and in appropriation acts, made provision for paying damages to those who have suffered loss from collisions when the vessel causing the injury belonged to the United States.

It is true that in the present case the findings of the Court of Claims do not have the same force as a judgment, but the claimant presented his case there with the permission of the Senate and in accordance with law. The United States was represented by an assistant of the Attorney-General, and the case was duly defended, and a careful review of the findings shows that they are in accordance with the facts of the case so far as the party in fault is concerned.

After the matter has proceeded thus far with the consent of those who represented the Government, and who had authority under the law to act, the committee think that the claimant in this particular case should receive reimbursement for the damage which has resulted directly from the collision, without waiting for the enactment of a general law. The court finds that the cost of repairing the boat was \$2,216.85, and that the actual loss in earnings while she was undergoing repairs was \$3,000. These sums amount in the aggregate to \$5,216.85, and the committee recommend the appropriation of this sum in full satisfaction of the claim.

The court estimates a further loss of \$1,500 in the earnings of the boat in consequence of the loss of public confidence in her safety after she resumed her regular trips; but the committee think that this estimated resulting damage is too remote to be considered favorably. Besides, the claimant in his petition only asks "that he be paid the amount for his time and expenses incurred in placing his steamboat in good condition for navigation." He speaks of "divers gains, profits, and advantages which would have accrued to him" from his contracts and business, but expressly states that he makes no claim except for his time and expenses as stated.

To carry out the views of the committee the following amendments are necessary: In line 6 strike out "six" before "thousand" and "seven" before "hundred," and insert in the first place "five" and in the second place "two."

Add at the end of the bill as printed, "and to be received by him in full satisfaction of all claims and demands in consequence of the said collision."

